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AN ASSESSMENT OF THE ATOMIC ENERGY CONTROL BOARD CONSULTATION PROCESS

by

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ABSTRACT

This report analyzes the consultation process followed by the AECB in discharging its responsibility for regulation development. It shows how the process could be improved by better targeting of the consultation towards groups that can be expected to provide valuable input. It also addresses the question of how best to convey to members of those groups the information they need before making comments on proposed regulatory changes. The study also looks at how effective the process is and at possible procedural improvements that might facilitate the preparation of comments by outside groups and improve the understanding among the public of the role played by the AECB and of the issues surrounding nuclear facilities and the use and handling of prescribed substances.

RÉSUMÉ

Ce rapport analyse le processus de consultation que suit la CCEA dans l'exécution de ses responsabilités réglementaires. On y explique comment ce processus pourrait être amélioré de manière à atteindre plus sûrement des groupes-cibles susceptibles de fournir un éclairage utile dans l'élaboration de la réglementation. On s'intéresse aussi au choix des meilleurs moyens pour communiquer à ces groupes l'information qui leur est nécessaire pour formuler des commentaires sur des modifications proposées à la réglementation. L'étude traite aussi de l'efficience du processus et des améliorations qui pourraient y être apportées pour faciliter la préparation de commentaires par des groupes extérieurs et pour favoriser une prise de conscience par le public du rôle de la CCEA ainsi que des questions soulevées par les installations nucléaires de même que par l'usage et la manipulation des substances prescrites.

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AN ASSESSMENT OF THE ATOMIC ENERGY CONTROL BOARD CONSULTATION PROCESS

The purpose of this study is to evaluate the effectiveness of the consultation process the AECB follows in carrying out its regulation-development responsibility. The consultation process we shall examine is a process conceived and operated in order to obtain usable inputs from outside sources in developing regulatory documents. Such a process involves the dissemination of information among the public, but that information is considered here as purely instrumental to the rule-making role of the Board. This report therefore only deals incidentally with the public information activities of the Board. The task of devising and implementing a public information strategy is a different question because it would have to take into account other aspects of the Board's activity.

The purpose of the consultation process is to arrive at better regulatory policies than what the Board could achieve alone with its own resources. The consultation process is not just a public relations exercise. However, if the consultation is well done it can undoubtedly enhance the Board's image and, in this manner, its effectiveness.

Apart from that regulation-development responsibility, the Board also regulates the development and operation of nuclear facilities and the use of prescribed substances. Among several other operations, this latter responsibility involves a multiple stage licensing process in which interested parties may intervene. The policy and procedures governing representations and appearances before the Board about licensing issues are not dealt with in the present report. The AECB recently issued (on May 17, 1983) Regulatory Document R-76 dealing primarily with such policy and procedures.

The Board, in its rule-making role, issues four types of regulatory documents:

i) Regulations;
ii) Generic licence conditions;
iii) Regulatory policy statements; and
iv) Regulatory guides.

For the purpose of this report no distinction is made between these categories.

Feedback from interested parties is an important aspect of rule-making. It is even better when and if that feedback can be obtained before a given rule is adopted, because it can prevent errors which could otherwise result in excessive costs to the regulated industry, in intolerable risk to the industrial work force or the general public, or even in public embarrassment for the Board. That is the reason why the Board wishes to improve, to the extent possible, the consultation process that it follows in carrying out its regulation-development responsibility.

The study looks in turn at the following two questions:

a) Does the AECB effectively contact every organization and individual that could conceivably provide useful input in the development of regulatory documents?

b) Is the consultation process followed by the AECB the one that can most successfully elicit responses from interested parties?

PART - I
THE TARGETING OF THE CONSULTATION PROCESS

At present, the AECB certainly strives to contact a large number of organizations and individuals when it does publish a "Consultative Document" about a proposed regulatory change. Literally hundreds of copies are mailed out first to those whose names appear on a general list and who automatically receive all such documents, and secondly to those whose names appear on ad hoc lists originating with the various divisions of the Board depending on the subject matter covered by the consultative document in question. Beyond that, notices of the issuance of the document are sent to individuals and organizations whose names appear in a supplementary general list as well as on divisional lists. In parallel with this direct mailing effort, the Board issues a twice-yearly "Regulatory Agenda" that also appears in the Canada Gazette. Finally, press releases are prepared for consultative documents which are deemed to be of general interest.

Of the hundreds of recipients of a given consultative document, a small fraction (about 6% on average) send back comments to the AECB. In order to appraise the significance of this "low" rate of response, we have to consider at least three possibilities about those who are the targets of this information effort and yet fail to respond.

a) They have nothing to contribute and/or could not be expected to respond;

b) They know something about the issue but agree with the draft regulatory document;

c) They know something about the issue but have no confidence in the consultation process followed by the Board or lack the resources to provide valid input.

We shall deal with the last hypothesis in the second part of this study. For the moment we leave it to one side.

Hypotheses (a) and (b) underline the need for proper targeting of the consultation process. The low rate of response may simply reflect the fact that consultative documents are mailed out to individuals or organizations whose names appear on the list for reasons that have nothing to do with the probability of their ever sending comments back to the Board:

- People who at one time wanted their names put, or kept, down but may since have lost interest.

- Public libraries that obviously do not see it as their responsibility to react to anything they get.

- Etc.

It is an easy enough matter to strike out such names from the mailing list and thereby, mechanically, raise the response rate. However, what is most important for the Board is not the cost savings associated with a shorter mailing list, but to make certain that as many individuals and/or organizations as possible that know something about the issue, do in fact get an invitation to comment.

We therefore come to the inescapable questions: What is the "ideal" list of such interested parties? What are the criteria to be used in devising such a list? These questions deserve some thought because the scatter-gun approach does not work: the consultation process must be targeted. Not everyone in the country can receive a copy of proposed regulatory documents if only because of cost considerations. Moreover, the hypothesis that "silence means substantial agreement" (see (b) above) carries some conviction only if a positive effort has been made to seek out those who might object or, in other words, if the consultation process is — and appears to be — an unbiased one. The

search for lack of bias or, more positively, for balance and effectiveness in targeting should be pursued along the following lines: broad groups of potential participants in the consultation process must be identified. It is basically by reference to such a list that the question of balance can be approached. This having been done, further questions relate to the ways in which contact should be made with these potential participants in the consultation process i.e. either through an informal process or through a more formal one focused on organizations; either with the help of a general all-purpose list or by the use of selective referrals; and either through direct mailing or via the information media.

1. Interest-Group Categories

The following categories appear to be those that are significant, considering the role assigned to the AECB by the Act relating to the development and control of atomic energy:

a) Other Regulatory or Supervisory Agencies

Departments of the federal and provincial governments that have responsibilities for health, industrial development, energy policy, environmental protection, mining and resources as well as international agencies or foreign governments can provide essential input from perspectives other than that of the AECB.

b) Holders of the AECB Licences

There is an almost contractual link between licensees and the Board and for that reason it would seem appropriate for the Board to issue advance warning of proposed regulatory changes and give the licensees an opportunity to seek clarifications and provide other feed-back.

c) Suppliers, Service Firms and Consultants to the Nuclear Industry

Those who provide inputs to the nuclear industry can be strongly affected by intended rules and can contribute valuable expertise on such rules and their impact.

d) Unions and Professional Associations with Members Working for Licensees

Nuclear facilities personnel and employees involved in the handling and use of prescribed substances have direct knowledge of operational conditions and may be subject to radiological risks.

e) Local Interest Groups

Some nuclear industry regulations impact on a relatively small number of firms (uranium mines, nuclear reactors, heavy water plants) that have a major significance for the communities in which they are located. Systematic efforts seem indispensable to reach these groups (i.e. municipalities, chambers of commerce, environmental associations in those particular communities).

f) Public Interest Groups

The nuclear industry provides a focus for many public interest groups that have a national membership and/or audience.

Each of the above-mentioned groups should have an equivalent opportunity to learn about and comment on consultative documents. If the information goes out to them and provided the consultation process is efficiently organized (see below Part II), the AECB can rightly interpret silence as concurrence. It can also expect to obtain all the relevant comments it could ever hope for.

2. Organizations vs. Individuals

A targeting policy requires an answer to the question: Should individual members of the various groups identified above be contacted or is it sufficient that the organizations, associations, unions etc. be the targets of the consultative process of the Board? At present, the list or lists used by the Board contain(s) the names of very many individuals. There has sometimes been overlapping of lists when the same individual is present on several lists because that individual is a member of more than one organization (multiple memberships), but overlapping occurs in a different and more important sense when several members of one organization receive copies for consultation purposes and are presumably expected to respond in the name of that organization (multiple contacts). For instance, the first two groups (i.e. regulatory agencies and licensees) are frequently represented on the current mailing lists by several individuals belonging to the same organization. As many as sixteen different individuals associated with Atomic Energy of Canada Limited have been "consulted"; there were at least four in the case of Denison Mines, eight for the Eldorado group, etc.

A proper answer calls for distinctions.

First, by necessity, the Board must carry on a one-to-one relationship with its licensees. The law imposes obligations on licensees and gives the Board precise duties and powers vis-à-vis licensees. These duties and responsibilities are very concrete and cannot be dealt with "at large" through an association of AECB licensees. No such all-embracing association exists nor can be imagined and the Board must deal individually and directly with each and every one of them.

But licensees themselves are organizations not, as a rule, individuals and, for that matter, so are other regulatory agencies. In this latter case as well, the Board consults with many individuals within any given federal government department.

There are pros and cons in the present practice of multiple contacts. Such a practice can certainly contribute to good communications between the functional divisions of the Board and their opposite numbers in other organizations: no one need be surprised by new regulations or regulatory documents. A feeling of mutual trust conducive to information sharing is created which may facilitate the Board's work. The internal communications of other regulatory agencies and licensees cannot always be relied upon in the sense that the AECB cannot be absolutely certain that its institutional contacts would internally circulate the consultative document to appropriate staff. On the other hand, as consultative documents are so broadly disseminated within a given organization, this may create some uncertainty as to whom is expected to respond. To be sure, some individuals receive a copy while others receive only a notice (a distinction to which we will presently return) but this is, at best, only an implicit suggestion as to the expected source of official comments. Indeed, it seems that the notion of an official response — as distinct from an individual's voluntary comments — is absent from the consultation process.

A final difficulty is related to the inherent impracticality of extending the practice of multiple contacts to the other interest groups.No one could seriously expect that the Board individually consult with each and every union member, each and every supplier or consultant to the nuclear industry, each and every member of a public interest group etc. Information supplied and notices given to unions, to professional associations or to industrial associations can properly be deemed to have been conveyed to all the members of such groups, at least as far as the Board's self-initiated contacts are concerned.

In order to take account of the various considerations above, we first recommend making the consultation process somewhat more focused, in the sense of targeting the consultation effort on organizations in their corporate capacity instead of focusing it on individuals within these organizations. Although this is of secondary importance, such a policy should also help keep costs down.

Our second recommendation is that this, however, need not entail putting an end to the Board's self-initiated contacts with particular individuals, in any type of organization, with whom the Board's staff maintain a continuing, functional relationship. These contacts should be considered to be outside the consultation process and might take the form of a letter from the heads of the Board's relevant operating divisions, informing these individuals that a consultative document has been sent to their respective organizations from which comments are expected and through which their own views should be made available to the Board. Such a letter could, however, also open the door to person-to-person contacts where this can be useful to elucidate ambiguities or suggest editorial changes. This should enhance the personal nature of these contacts while, at the same time, producing in the relevant organizations a heightened sense of their corporate responsibility in the consultation process.

Third, against the backdrop of a citizen's right to have access to information, contacts initiated by interested individuals must obviously be followed up. The point here, is that through the semi-annual Regulatory Agenda plus the release of notices about the publication of consultative documents in the general and specialized media, any interested person should be able to spot an item of particular interest and ask for a copy. As a rule, this need not imply having one's name put on a permanent mailing list.

3. General vs. Ad Hoc Lists

At present, Board mailings for consultation purposes — as previously indicated — involve the use of a general list and of specialized lists. The general list was made up from the main following sources:

- a list used for press releases
- a list of people to whom the annual report was sent
- a list provided by Department of Supply and Services (including in particular a number of public libraries)
- a list supplied by each division
- a list of all known nuclear protest groups

There is no a priori reason to suppose that the result bears any relationship to the above-mentioned targeting criteria. We recommend that the general list be scrapped, at least in the context relevant to the present report i.e. the consultation process.

Should another general list be constituted? By a "general list" we mean a list that would always be used to mail out copies of the consultative document, each time any such document is issued. From an inspection of the list of "interest group categories" in section 1, we suggest that only those in the first and last categories need always receive each and every one of those documents, namely other regulatory and supervisory agencies, in Ottawa, in the provinces and abroad as well as public interest groups.

We have also analysed the special lists developed by different operating divisions of the Board for the purpose of mailing consultative documents or notices of issuance of such documents. These lists typically do not overlap, with only between 10 and 20 percent of names appearing on more than one list and with almost none appearing on three lists or more. However, it does strongly suggest that, just as the

present general list is not a satisfactory approach to the consultation process, the ad hoc lists cannot be used either as a starting point in a "new and improved" general, all-purpose list.

From past experience, a truly comprehensive regulatory document is a very rare occurrence; almost all have a more or less limited scope and therefore, consultative procedures should be dictated by that fact. If a document of truly general scope comes along it should be a simple matter to allow for this exceptional occurrence.

Consequently, we recommend that it be the originating division's (O.D.) responsibility to identify the relevant interest groups belonging in each category at the time the proposed regulatory document is drafted (i.e. the category of licensees involved, the suppliers and consultants to these licensees that may be affected, the unions and local communities involved and so on). This recommendation merely formalizes what has been current practice in any case, but clearly defines the responsibility for making sure that the set criteria are adhered to. We should also say that in carrying out this responsibility, an O.D. would not have to start from scratch. Up-to-date lists for the various categories (or some of them) could be maintained for this purpose by the Regulatory Documents Section, the Office of Public Information and/or the Information Management Section. Finally, it may be suggested that this approach that requires the O.D. to survey and identify impacted groups, is consistent with the spirit of the Treasury Board directives on socio-economic impact analysis (SEIA) that have to be followed when the document is a proposed regulation.

The AECB's internal "Guide to Regulatory Document Production" should be amended to reflect the above recommendation as well as the need, in implementing it, for consultation by the various divisions involved, and the need to control its implementation.

This consultant, it should be stressed, considers it outside his mandate to make recommendations to the Board in regard to its public information activities. The Board may wish to maintain, or indeed expand, its dissemination of consultative documents in order to inform the public without expecting any comment in return. That is an entirely different question that can only be addressed in the context of an evaluation of its public information strategies.

4. Documents vs. Notices of Publication

While most contacts initiated by the Board consist of a consultative document being sent out, a smaller number of contacts made at the initiative of the AECB consist of a notice of publication. Considering handling and postage costs on the one hand and the average size of consultative documents that this consultant has examined, the raison d'être of mere notices of publication is elusive. Sometimes it may have been seen as a (inexpensive?) substitute for press releases or even for the publication of the Regulatory Agenda. Taking into account other recommendations of this report, we suggest doing away with the half-way measures of mere notices of publication.

In particular, this recommendation should be looked at in the context of our earlier recommendation about focusing on organizations rather than individuals, the process of consultation. In this more formal context, all those that are consulted ought to receive the consultative documents themselves rather than mere notices. On the other hand, where direct contact with specific individuals within an organization ought to be maintained at the operational level, we have suggested that a letter be sent rather than just a notice.

We also recommend strengthening the effort directed at the media. It has been suggested to us that at present, only those documents that seem to have a "general" interest lead to a press release. But the generality of a document's subject matter is not a useful indication of the interest it holds for some people. For instance, documents relating to Candu reactors (Documents No. C-6, C-7, C-8, C-9) are of interest to local communities where those reactors are situated. The local and regional media should be targeted for an information effort. Similarly, interest groups under Category (c) "Suppliers, Service Firms and Consultants" might be adequately informed through trade publications and professional journals and may not necessarily have to be sent copies of the documents. These communiqués to the media should be explicit enough so that they do not lead to avoidable requests for copies or for information that reflect incomprehension rather than an intention to comment.

5. Costs and Benefits in Atomic Energy Control

There does not exist this side of heaven, perfect safety or absolute certainty. Beyond the technical issues raised by the regulatory activity, one should not lose sight of the fact that any rule must, in the end, reflect a weighing of the relative importance of a further reduction in the probability of harm resulting from the processing, handling and use of radioactive substances against the incremental cost of yet more elaborate and fastidious safeguards. These opposite considerations must be present, or at any rate, must be given an equal chance of making themselves felt during the production of, and consultation about, regulatory documents.

The targeting of interest groups for the consultation process should therefore reflect a concern to obtain balance in the relative importance given to these two viewpoints. This concern cuts across several of the interest group categories listed under section 1. For instance among government regulatory and supervisory agencies, natural resources/energy/mines departments can naturally be expected to be more sensitive to cost considerations whereas health/environment/workers' compensation and labour authorities can be expected to primarily respond to health and occupational hazards. Equal care should be taken to inform, and hear from, each "side".

6. Conclusions and Summary of Recommendations with Regard to Targeting

The thrust of the above observations is to modify the consultation process followed, up to the present by the AECB, so as to:

1° Target the consultation process at institutional members of well-identified groups instead of following the rather open-ended approach used so far;

2° Make positive efforts to provide equal opportunity to all identified groups, and in particular local interest groups, to make themselves heard.

3° Recognize that the AECB divisional heads need to maintain good working relations with their counterparts in other regulatory and licensed organizations through information exchange;

4° Formalize somewhat the consultation process in making explicit the Board's expectation of a corporate/institutional response to its request for comments on consultative documents;

5° Delegate to the originating divisions the task of designating the targets of the consultation effort. This should be made easier by the emphasis on eliciting an organizational/institutional response;

6° Rely more on the media to reach professionals, firms and the general public whose interest in the regulatory activity of the AECB is more diffuse and hence less predictable;

7° Retain the ability to respond in an ad hoc manner to requests for information and comments from interested individuals and organizations.

The open-endedness of the present consultation process is a valuable feature and the Board should avoid a pendulum movement in the opposite direction. The Board's regulatory activity must be an open one carried out publicly. Interested citizens from any group should be able to learn what is going on and be afforded the opportunity to take part in the formulation of regulatory policies, at their own initiative.

However, the Board cannot be content with a process that largely leaves it to chance whether comments will be received on proposed regulatory documents. The Board knows well and constantly interacts with a number of important organizations directly concerned with nuclear facilities and the use of prescribed substances, and their potential impact on the economy, human health and the environment. Consequently, without excluding anyone, it ought to target its consultation process at these groups making sure that, for their own part, they do not leave to chance their own contributions to this feedback process, and making sure also that institutions with diverse and sometimes opposite interests or viewpoints are given a fair hearing.

APPENDIX TO PART I

ANALYSIS OF AECB MAILING LISTS

We have carried out an analysis of the AECB mailing lists using the framework described in the main text of the report. To do this, we have allocated names appearing on the list among the six categories or interest groups identified for the purpose of this report. This was done both for the general list and for some divisional lists. Four divisions supplied us with lists that lent themselves to this kind of treatment namely:

- The Fuel and Heavy Water Plant Division;
- The Operator Certification and Research Facility Division;
- The Uranium Mines Division;
- The Waste Management Division.

In the case of the general list, not all names could be allocated to the six pre-determined groups because some copies of consultative documents are sent to AECB regional offices or to organizations, such as libraries or the media, from which responses cannot be expected. Finally, a number of names could not be linked up with any targeted group without further research. In all cases where identification did take place, this was done using the best available evidence but sometimes required a subjective judgement. The breakdown by groups should therefore be treated as indicative rather than precise.

Finally, comments received from organizations and individuals on any of those lists, with respect to twenty-one consultative documents, were also identified and response rates calculated for the general list and, on the aggregate, for all four sectional lists.

TARGETING OF THE AECB GENERAL AND FOUR DIVISIONAL MAILING LISTS

TARGET GROUPS	GENERAL LIST			DIVISIONAL LISTS
	SENT COPIES	SENT NOTICES	TOTAL	
1. Regulatory Agencies	34	5	39	72
2. Licensees	52	2	54	119
3. Suppliers & Consultants	29	4	33	6
4. Unions and Associations	10	0	10	15
5. Local interest groups	2	0	2	19
6. Public interest groups	20	4	24	1
SUB-TOTAL (1 to 6)	147	15	162	232
7. AECB Regional Offices	11	0	11	—
8. Public Libraries	69	7	76	—
9. Law Libraries & Specialists in regulatory processes	9	1	10	—
10. Medi	12	0	12	—
11. Non allocated	75	28	103	—
SUB-TOTAL (7 to 11)	176	36	212	—
TOTAL	323	51	374	232

The total number of names appearing on the lists that were analysed exceeds six hundred. However, that does not take into account all divisions of the Board. The actual number who may receive consultative documents or notices from the AECB is consequently even higher. There is considerable apparent wastage on the general list, at least, if the mailing of consultative documents is evaluated for its contribution to the consultation process. If this is done as part of the Board's information policy, it naturally is a different matter.

If we look at the responses obtained from people and organizations whose names appear on various lists, we find that in regard to 21 consultative documents, 23 comments were received from addressees on the general lists and 37 from those on divisional lists. These numbers translate as a response rate of 6.1% and 15.9% respectively from the general list and the divisional lists. In the case of the general list, this reponse rate is computed by reference to the total number of names including those not allocated to targeted groups. If only targeted groups were taken into account the response rate would go up to 14.3%, very close to the response rate obtained from the divisional lists.

With respect to the interest groups from which responses have come, there has been a response rate of approximately the same importance relative to the number of names appearing on the mailing lists between the two following categories:

- Group A (categories 1 to 3)
- Group B (categories 4 to 6)

That is to say about 80% and 20% for the first and second category respectively.

PART - II
THE EFFECTIVENESS OF THE CONSULTATION PROCESS

At present, the consultation process followed by the AECB yields valuable input into its rule-making function. Some comments it receives are of an editorial nature but there are also important points of substance that are brought up by interested parties. No one at the AECB has suggested that comments received lack relevance or that the process wastes time or resources.

In the first part of this study we have looked at the way in which the Board goes about making formal invitations to various parties to take part in the rule-making process. By improving the targeting of this effort, the Board can make sure that no one is left out. Assuring that this is done is only one part of the answer to the original question: Why are there not more participants in the consultation process? As the saying goes "You can lead a horse to the water but you cannot make it drink." The next question must therefore be: Is the consultation process designed in such a way that it fails to provide adequate motivation even for targeted groups to take an active part?

Evidence that can be brought to bear on this question may come from either of two possible sources: perceptions of the outside participants in the consultation process and a comparative evaluation of consultation procedures followed by other federal regulatory bodies.

1. A Comparative Assessment of Consultation Procedures

Consultative procedures are not just procedural matters but they reflect policy choices with respect to the role not only of the consultation process but of the regulatory body itself. A regulatory body that perceives its role as one of serving as the focal point for wide-ranging debates about a given sector of national life, and as an educator of public opinion, naturally will encourage a process of debate and consultation of a form very different from that preferred by an agency that restricts its role to one of a largely passive regulatory or licensing body.

Within the more restricted role of regulator, different procedural rules may reflect the desire to influence the balance of arguments on different sides of an issue.

Our comparative assessment will be performed by reference to only three other regulatory agencies of the Canadian government: the Canadian Radio-Television and Telecommunications Commission (CRTC), the Canadian Transport Commission (CTC) and the National Energy Board (NEB).

o Procedural Rules for Consultation on Regulatory Instruments

All three agencies use public notices to record the receipt of applications, to announce public hearings and to issue policy statements or new regulations but, when hearing applications, the CRTC and CTC may require applicants to inform the public about the application thereby shifting to them the cost and work involved.

The right of any interested party to intervene in an application is recognized by these agencies. In all cases, the normal procedure involves public hearings. In the case of the CRTC, the commission may hold a public meeting to inform people of the matters to be considered at a subsequent hearing and to take note of ideas, concerns and points of view that may be expressed.

The formality of proceedings at a hearing may vary a great deal. They are rather informal at broadcasting hearings of the CRTC whereas telecommunications hearings are very formal as are hearings before the CTC with counsels present and cross-questioning of witnesses. Because the formal telecommunications hearings may be costly to prepare and attend, the CRTC may award costs to be paid by regulated companies to intervenors. In certain cases, the CTC may provide advice or assistance to a party to a proceeding relating to an application as to the proper procedure to be followed.

The NEB undertook in 1982 a major re-writing of the Rules of Procedures for its hearings. However, these relate to its licensing activity rather than to regulatory change as such where the consultation process is most informal. Since 1982, the NEB also publishes a regulatory agenda.

o **Public Information Activities**

Regulatory policy is not set in a vacuum but rather in a context of forecasts, values and policy objectives. Conflicting interests, costs and benefits have to be weighed, and opposite viewpoints on all that must find a forum to be ventilated and confronted.

The CRTC provides good examples of such forums where a given policy area is open to a wide-ranging debate outside the regulatory process. For instance:

- In January 1981, the CRTC sponsored a two-day working session on Balance in Broadcast Programming. Participants included representatives from the field of public policy, the academic disciplines, the electronic and print media, and students and critics of communications. Attendance was by invitation, but at the end journalists were given a briefing and a report of the proceedings was made public about one year later.

In January 1984, the CRTC announced its joint sponsorship, with the McGill University Centre for the Study of Regulated Industries, of a two-day conference on Local Measured Telephone Service to be held in May. This conference will be open to the public and will consist of "a series of panel discussions with presentations by distinguished specialists representing consumer interests, telephone companies, the academic community and government."

The CRTC is not unique among federal regulatory bodies in acting as a sponsor for seminars, conferences, etc. designed to stimulate and enrich debates about the policy area for which it is responsible. The CTC is currently holding hearings on the deregulation of air transport. Also the National Energy Board has held hearings on aspects of the world energy crisis.

In September 1982, the NEB presented a brief on Frontier transportation of oil and gas to the Special Committee of the Senate on the Northern Pipeline. In November of the same year, the NEB sponsored in cooperation with McGill University Centre for the Study of Regulated Industries, a conference on the Regulation of Pipelines in an Inflationary Era.

2. Perceptions of Outside Participants

In an attempt to obtain an outside evaluation of the ABCB consultation process, SECOR contacted approximately thirty organizations whose names appear on the Board's mailing list. Usable replies were obtained from half the organizations thus contacted. Respondents belong to all the various interest groups identified in this report.

The results obtained from this informal survey should be treated with caution because it was not carried out according to scientific sampling principles. Although an attempt was made to avoid systematic bias, the informality of the procedure followed does not allow us to make any claim to accuracy that could be rigorously backed up. Resources allotted to this project did not allow for a more systematic approach. The questionnaire used can be found in an appendix to this report.

Regulatory agencies, other than the ABCB itself, appear quite satisfied with their past involvements in the consultation process of the Board. They consider the information supplied and the time allowed to respond quite adequate. They are also satisfied with the consideration given to their views by the Board although health-oriented regulatory agencies, at the provincial and federal levels, did point out that the Board's own priorities prevented it from taking fully into consideration the views they had put forward.

These agencies are not interested in appearing at ABCB public hearings but they value highly the opportunity they already have of being heard in person, and the direct personal contact between each agency's and the Board's personnel. They also uniformly assert that their silence on issues that are relevant to their respective mandates should be interpreted as concurrence.

Licensees and suppliers or consultants to the nuclear industry do not exhibit quite the same level of satisfaction with the Board's consultation process. Although the information supplied appears satisfactory most of the time, some of their involvement in the consultation process is motivated by the desire not so much to comment as to obtain elucidations about obscure or ambiguous points in the consultative documents. As eventual targets of a given regulatory document, they are very sensitive to its precise meaning in practical circumstances. Because of that, they find the time allowed to prepare comments too short, especially for the more complicated documents. However, they are all satisfied with the consideration given by the Board to their points of view.

They also confirm that absence of comment on their part can generally be interpreted as concurrence, as long as the issue is one that is relevant to their activity. The one exception is found when the time constraint prevents them from giving a well-considered response.

A majority apparently feels that there is room for improvement in the consultation process. Almost all wish for direct contacts allowing them to be heard in person and/or be briefed by Board's officials about the meaning of some proposed regulatory documents, ambiguities etc. An overwhelming majority feels that public hearings are not needed.

Local and public interest groups were those that expressed most frustration with the consultation process. They feel that neither the information supplied nor the time period allowed for comment is sufficient. What these groups are concerned with relates less to the details of the proposed regulatory documents than to the assumptions and implications underlying proposed regulatory policy. The present consultation process is not of much help to them in this respect and, because of that, some groups entirely dismiss it as irrelevant.

Because of that evaluation of the consultation process their non-participation cannot be interpreted as concurrence. They lack the expertise needed to make valid comments and they lack the resources and time needed to consult their membership on all the issues that come up.

While some groups believe that the AECB is hopeless and beyond repair, other groups would welcome changes in the consultation process that would allow greater interaction between themselves and the Board. Public hearings are not ruled out, but do not appear to be seen as necessarily the most appropriate format for that interaction. There seems to be no support for any kind of direct assistance by the Board to such groups (a proposition that is also valid for all other groups who do not think that this would be a useful way of spending taxpayers' money).

o **A Dichotomization of the Consultation Process**

Those observations suggest the need for some dichotomization of the consultation process. The technically proficient groups (regulatory agencies and licensees as well as suppliers and consultants) are generally satisfied with the process, and value highly personal contacts with the Board's staff to clear up ambiguities etc. This would tend to reinforce our recommendations to allocate to the originating division the responsibility of targeting the consultation process and of nurturing the functional relationship between the Board's staff and their counterparts in government and industry.

Local interest groups in particular appear most out of touch with the consultation process; they want to be informed and they highly value whatever item of information they currently get but find it hard to understand its meaning and, in particular, the implications for themselves.

For public interest groups, the present consultation process is not terribly relevant. They are interested in the wider issues surrounding nuclear power and prescribed substances. With that in mind, it may well be that information and discussion sessions before the release of consultative documents could provide a more useful forum than the present

consultation process which focuses narrowly on specific documents. Such information sessions should be given somewhat wider terms of reference and could be used to air different viewpoints, debate assumptions and explore implications of regulatory policies. This would echo not only the concern of private-sector, public interest groups but also, to an extent, the concerns of other health or environment related regulatory agencies that have also felt constrained by the present narrow focus approach.

In order to maintain its credibility in the defense of the public interest, the AECB must show much open-mindedness towards non-nuclear industry points of view. The highly satisfactory relationship that it enjoys with industry participants as evidenced by the present informal survey, strengthens this proposition.

3. Should the AECB Revise its Own Procedural Rules?

Summary examination of the consultation processes of the CRTC, the CTC and the NEB raises four main issues.

- The locus of the consultation responsibility;
- The advisability of public hearings;
- The degree of formality and/or adversary nature of the proceedings at such public hearings;
- Assistance to non-specialist, public interest groups in preparing comments.

a) The Locus of Responsibility

It is interesting to note that both the CRTC and the CTC regulate and license activities that directly impact the general public. The granting of a television licence, the raising of telephone rates and the curtailing of rail services are issues many people can relate to because they affect their daily lives. Few would suggest that the nuclear industry has a similar impact. Environmental and human health considerations would evoke widespread responses but the level of abstraction is different: arguments deal with probabilities not with determinate and visible effects. If this distinction is correct, it would suggest that atomic energy is not a sector where licensees can easily be instructed to "inform their customers" about proposed regulatory policy changes.

There is one exception to this line of argument and that relates to local interest groups and residents of the area where a nuclear facility is situated. It is possible, in that context, to apply a geographical criterion to identify those who may have a stake in the proposed change.

Present AECB procedures already recognize this when dealing with an application for a licence. In such a case, the applicant is required to inform the public of his intention and provide the public with the pertinent information. Some rules for this public information requirement are set down in regulatory document R-2 (effective Nov. 1, 1980).

There is a fine distinction to be made between issuing a licence for a facility and, after the licence has been granted, modifying the regulatory provisions under which such a facility must be operated. The Board may want to assess the feasibility of requiring certain classes of licence holders to hold a public meeting wherever the Board sets in motion a change in the regulatory provisions under which they operate. This would be a more effective way to make sure that locally affected groups are consulted than the present consultation process originating in Ottawa which is ill-suited to this task.

However, as a general rule, the rule-making responsibility of the Board is not set in motion at the request of licence holders but is an autonomous activity of the Board contrary to that of the CRTC and the CTC. This essential difference, therefore, rules out the shifting to licensees of the burden of, and responsibility for, the consultation process. Except perhaps for local interest and community groups, the Board must continue to take the initiative to consult.

b) **Public Hearings**

Public hearings allow the airing of an applicant's case for regulatory changes in its licence. They allow the public to get first-hand information about the reasons behind the application and also allow debate to take place to challenge the applicant's arguments and those of its opponents. In other words, the public hearings

format seems ideally designed for a regulatory body that performs a quasi-judicial function and whose role is to, in effect, arbitrate between conflicting interests or points of view.

Although there is an element of weighing of relative benefits and costs of proposed regulatory changes, the AECB is not involved in appraising the merits of applications for modifications in regulatory requirements but is itself the originator of the proposed changes. Moreover, the highly technical nature of the AECB field of jurisdiction makes contradictory proceedings in a court-like atmosphere almost impossible or at least very inefficient and costly.

Public information sessions about proposed regulatory changes might be more useful than formal public hearings. We made reference to seminars and conferences sponsored or even arranged by other regulatory agencies precisely when they were contemplating changes in the regulatory environment. The technical nature of AECB regulations makes the recourse to this formula even more appropriate.

c) <u>The Degree of Formality of Proceedings at Public Hearings</u>

Having ruled out quasi-judicial proceedings as inappropriate to the role performed by the AECB, the issue of how formal or informal proceedings ought to be, can be rapidly disposed of. Only judicial or quasi-judicial proceedings require a high degree of formality. Public information sessions are designed to enlighten not adjudicate and their format must be dictated by that objective.

The very informality of the process carries implications for the selection of topics that would be fit subjects for public information sessions. Indeed, such sessions should probably precede

rather than follow the issuance of proposed regulatory documents. Not all topics covered by regulatory documents are fit subjects for public information sessions. The addition of a public information stage need not overly lengthen the consultation process: after a substantive issue has been fully aired at public "hearings" the traditional consultative process on the ensuing draft regulatory documents could be shortened and narrowed down to editorial comments. In such cases, the need for drafting a consultative document can even be eliminated and the draft regulatory document itself be circulated for comment.

Of course, the decision to go in that direction is a policy decision that would have to be examined on its own merit after careful study of all its implications. The reason for mentioning it here is to underline the appropriateness for the Board to give that possibility full consideration.

d) **Assistance to Non-Specialist, Public Interest Groups in Preparing Comments on Regulatory Policy Changes**

Both the CRTC and the CTC have policies designed to help non-specialist groups prepare submissions and comments. In the case of the CRTC, this even extends to financial assistance in hiring expert help for brief preparation and appearance and representation at hearings. Yet the technical difficulty inherent in their respective fields of jurisdiction is not greater than that found in the AECB's jurisdiction.

The Board already strives to make its consultative documents as intelligible as possible to non-specialists. Indeed the very existence of consultative documents that are not simply draft regulations attests to that concern.

We have been asked to examine the language of a sample of consultative documents issued in the past by the Board and to form an opinion about its usefulness to the non-specialist. In particular,

with this consideration in mind, we examined the documents concerning the limitation of exposure to ionizing radiation (Consultative documents C-47, C-78 and press release 83-12), the use of fault trees in licencing submissions (Consultative document C-70) and geological disposal of high level radioactive waste (Consultative document C-71). We also looked, in a more summary fashion, at a number of other documents. On all topics, an obvious — and successful — effort has been made to make the documents readable by a non-specialist.

However, for the non-specialist, understanding a written text and being able to place it in context and to evaluate the multitude of choices underlying any regulatory effort are two different things. In a way, it is the press release on the limitation of exposure to ionizing radiation that comes closest to an explanation of the purposes of contemplated regulatory changes because it addresses the question: Why? whereas other documents tend to focus exclusively on the question: How?

In other words, there are limits to the gains in understanding that can be achieved even by feats of writing and editing. For the non-specialist, the main problem lies in his own limitations. Even access to comments from other contributors to the consultation process and access to the Board's own analysis of those comments fail to lift that most important inhibition to active participation by a non-specialist in the consultation process.

To the extent that the Board views such participation by non-specialists as important to the maintenance of a high degree of confidence from the general public in the ability of the Board to safeguard the public interest vis-à-vis the nuclear industry, then a more positive approach to that participation may have to be sought.This more positive approach need not take the form of financial assistance to public interest groups. Conceivably, the most useful assistance might consist of making available the Board's own expert staff for briefing sessions in preparation of conferences and seminars.

4. Conclusions and Summary of Recommendations with Regard to Effectiveness

When directed at groups that form part of the nuclear industry and at other regulatory agencies, the AECB consultation process appears quite satisfactory. The assumption that silence implies concurrence is a solid one in that context. Fostering close links between the Board's staff and their functional equivalents in regulatory agencies and licence holders can only improve an already satisfactory relationship.

However, in dealing with unions and professional associations, local communities and public interest groups, it is not possible to issue such a clean bill of health about the Board's consultation process. The following recommendations are directed at possible improvements on that regard.

1° Consider the possibility of involving licence holders in an information effort directed at local communities where regulatory changes affecting a nuclear fuel mining/processing facility, a nuclear reactor or a heavy water plant may have substantial impact if only by creating uncertainty and anxiety.

2° Organize public information and discussion sessions where the broader context surrounding and underlying a policy change can be discussed before the regulatory change itself is initiated. This could be done in cooperation with other regulatory agencies that approach the nuclear industry from a different perspective, and would be particularly targeted at public interest groups. Such sessions would be informal.

APPENDIX TO PART II

INTERVIEW GUIDE

INTERVIEW GUIDE - AECB

The AECB is presently conducting a study in order to assess the effectiveness of its consultation mechanism.

Your name appears on the Board's present mailing list and we would appreciate if you would answer some questions.

A - **With respect to past consultations (i.e. invitations to comment on proposed regulatory documents)**

a) Was the <u>information</u> supplied through the consultative documents or otherwise adequate ?

b) Were you given enough <u>time</u> to make your comments ?

c) If and when you did comment, did the Commission give adequate <u>consideration</u> to your comments ?

... 2

A - **With respect to past consultations...**

d) If and when you did not comment, was it because

... you basically <u>agreed</u> with the content of the consultative documents?

... you had <u>nothing much to say</u> (did not know much about the subject matter; did not care; disagreed but on very minor points...) ?

... for some other reason?

B - **Do you believe that the Board should, in the future, improve its consultation procedure ?**

If so, would you, for instance...

1. Prefer to be <u>heard in person</u> by the Board?

2. Recommend that some groups receive technical or financial <u>assistance</u> in preparing their comments?

3. Favor that the Board hold <u>public</u> hearings?

4. <u>Other</u> :